

SERVICE DATE - JANUARY 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33862

PUBLIC SERVICE COMPANY OF COLORADO—CONSTRUCTION EXEMPTION—  
PUEBLO COUNTY, CO

Decided: January 3, 2001

By decision served on August 23, 2000 (August 23 decision),<sup>1</sup> we conditionally exempted the Public Service Company of Colorado (PSCo) under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct a line of railroad approximately 1,500 feet in length. The proposed line will serve PSCo's Comanche Power Station in Pueblo County, CO, and will connect with a line of the Union Pacific Railroad Company, crossing a track of The Burlington Northern and Santa Fe Railway Company (BNSF).<sup>2</sup> We stated that, upon completion of the environmental review process, we would issue a final decision addressing the environmental impacts and, if appropriate, make the exemption effective at that time.<sup>3</sup>

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<sup>1</sup> Notice was published in the Federal Register on August 23, 2000 (65 FR 51405).

<sup>2</sup> On May 19, 2000, PSCo filed a related petition in STB Finance Docket No. 33862 (Sub-No. 1), Public Service Company of Colorado—Petition for Crossing Authority Pursuant to 49 U.S.C. 10901(d) (Sub-No. 1 proceeding), seeking authority under 49 U.S.C. 10901(d) to cross the BNSF track. On October 10, 2000 (October 10 decision), we served a decision instituting the crossing proceeding under the modified procedure at 49 CFR 1112. Because PSCo's petition was an evidentiary submission, it was treated as an opening statement. BNSF's reply to PSCo's petition was due November 9, 2000, but BNSF did not reply. The merits of the crossing petition will be addressed in a subsequent decision in the Sub-No. 1 proceeding.

<sup>3</sup> We also denied BNSF's motion to dismiss the petition for exemption. BNSF argued that we lack jurisdiction over the construction because the proposed line would be spur or industrial track that, under 49 U.S.C. 10906, is exempt from 49 U.S.C. 10901. BNSF also contended that we do not have jurisdiction over the proposed crossing of BNSF's track in the Sub-No. 1 proceeding because PSCo is not a rail carrier. In the August 23 decision, we found that the track at issue here would be a line of railroad and that PSCo would be assuming the responsibilities of a rail carrier and that, consequently, we have jurisdiction over both the construction and the crossing requests. August 23 decision, slip op. at 2-3. We denied BNSF's similar motion to dismiss in the Sub-No. 1 proceeding. October 10 decision, slip op. at 1. BNSF filed a petition for judicial review of both decisions in The Burlington Northern and Santa Fe Railway Company v. Surface Transportation Board, et al., No. 00-1455 (D.C. Cir. filed Oct. 20, (continued...))

An environmental assessment (EA) prepared by our Section of Environmental Analysis (SEA) was served on September 8, 2000. In the EA, SEA preliminarily concluded that, based on the information provided from all sources as of the date of the EA, the construction and operation of PSCo's rail line would not significantly affect the quality of the human environment, if the mitigation measures set forth in Section 6.0 of the EA were imposed. Comments to the EA were due on October 10, 2000. No comments were received. Accordingly, SEA has recommended in a Post Environmental Assessment memorandum that the mitigation measures in the EA be imposed.

We agree with SEA that the EA adequately identifies and assesses potential environmental impacts, that the scope of the EA is appropriate, and that there are no significant environmental impacts. We further agree that, subject to the seven recommended mitigation measures set forth in the Appendix to this decision,<sup>4</sup> the construction and operation of PSCo's rail line would not significantly affect the quality of the human environment and that preparation of an Environmental Impact Statement is not required.

Therefore, we will adopt the environmental mitigation measures recommended by SEA as set forth in the Appendix to this decision, and will impose them as a condition to the exemption. We will allow the exemption, as conditioned, to become effective at this time.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. We adopt the environmental mitigation measures set forth in the Appendix to this decision, and we impose them as a condition to the exemption granted in this proceeding.
2. The exemption conditionally approved in the August 23 decision is effective 30 days from the date of service of this decision, subject to the condition that PSCo comply with the mitigation measures imposed in this decision with respect to the construction and operation of the involved rail line.

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<sup>3</sup>(...continued)  
2000). A joint unopposed motion to dismiss the court case – because neither the August 23 decision nor the October 10 decision are “final” or ripe for review – remains pending with the court.

<sup>4</sup> Those measures include PSCo's proposed voluntary mitigation (set out in Section 5.0 of the EA) as well as other appropriate environmental mitigation.

3. This decision is effective 30 days from the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary

APPENDIX

ENVIRONMENTAL MITIGATION MEASURES:

**PHYSICAL RESOURCES – Geology and Soils, Surface and Ground Water, and Air Quality**

1. PSCo shall limit construction activities and vegetation clearing to the railroad right-of-way.
2. PSCo shall ensure that all construction debris is removed and disposed of in a proper and legal manner consistent with state and local disposal procedures.
3. PSCo will employ Best Management Practices to prevent erosion within the proposed project area.

**BIOLOGICAL RESOURCES – Vegetation and Wetlands, Wildlife, and Visual Resources**

4. PSCo shall reseed the right-of-way outside the subgrade slope with grasses and other appropriate vegetation to minimize impacts on wildlife after construction is completed.

**NOISE**

5. PSCo shall maintain construction and maintenance vehicles in good working order with properly functioning mufflers to control emissions and noise.

**CULTURAL RESOURCES**

6. PSCo shall notify the Colorado State Historic Preservation Officer if any cultural or archeological resources are discovered during construction.

**HAZARDOUS MATERIALS/WASTE SITES**

7. Should a spill occur, PSCo shall follow the appropriate emergency response procedures outlined in its Emergency Response Plan, and ensure that the spill is cleaned up according to all applicable Federal, state, and local regulations.